



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
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Arnold Schwarzenegger  
Governor

October 10, 2007

Douglas Erdman  
City of Huntington Beach  
Public Works Department  
2000 Main Street  
Huntington Beach, CA 92648

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE NEWLAND STREET IMPROVEMENT PROJECT, CITY OF HUNTINGTON BEACH (ACOE REFERENCE NO. NOT AVAILABLE)**

Dear Mr. Erdman:

On April 5, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed street and storm drain improvements for Newland Street in the City of Huntington Beach. On May 29, 2007, we received the requested final environmental document prepared pursuant to the California Environmental Quality Act. On July 2, 2007, we received requested correspondence regarding your application with the California Coastal Commission. On September 17, 2007, we received confirmation that Orange County Sanitation District would allow the proposed diversion of dry-weather runoff, discussed below, subject to conditions.

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

**Project Description:**

Widening of Newland Street from Pacific Coast Highway (PCH) to Hamilton Avenue. The project includes the corresponding extension of reinforced concrete box culverts at the crossing of Huntington Beach Channel; modification of the Street's profile at the crossing to improve lines of site for motorists; and the installation of a new storm drain in Newland Street that will connect to an existing drain in PCH. The project is located within Section 13 of Township 6 North, Range 11 West, of the U.S. Geological Survey *Newport Beach, California*, 7.5-minute topographic quadrangle map (33.64878883 degrees N/-117.979591 degrees W).

***California Environmental Protection Agency***



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Receiving water:                   Huntington Beach Channel.

Fill area:                         0.05 acres of permanent impact to a flood control channel, including 0.002 acres of wetlands therein (56-linear feet).

Dredge/Fill volume:             Not Available

Federal permit:                 U.S. Army Corps of Engineers Nationwide Permit No. 14.

The proposed project includes the discharge of fill to 0.03 acres of freshwater wetlands that are waters of the State, but, due to their isolated nature, are not subject to regulation under Clean Water Act Section 404. On April 5, 2006, we received a Notice of Intent pursuant to the State Water Resources Control Board's Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction". As compensatory mitigation for impacts to beneficial uses, you originally proposed to contribute to the eradication of invasive plant species in the Santa Ana River. During review of the subsequent Mitigated Negative Declaration, Regional Board staff requested that the compensatory mitigation be located in closer proximity to the project area. The mitigation proposal has been amended to involve restoration of a portion of the Upper Magnolia Marsh, as described below. Mitigation for discharges of fill to both the federal and non-federal waters has been combined.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2002-0010 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Coastal Development Permit from the California Coastal Commission. Pursuant to the California Environmental Quality Act (CEQA), the City of Huntington Beach adopted a Mitigated Negative Declaration on September 18, 2006. The Executive Officer has considered the City's Mitigated Negative Declaration in the issuance of this Certification.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent application submittals. The proposed mitigation is summarized below:

**Onsite Water Quality Standards Mitigation Proposed:**

- Nuisance flow and 'first-flush' discharges from the proposed project will be treated in a hydrodynamic separator. Nuisance flows will be diverted into the sanitary sewer pending approval by the Orange County Sanitation District<sup>1</sup>.
- Additional site-specific best management practices (BMPs) are specified in the site's Storm Water Pollution Prevention Plan (SWPPP) and Water Quality Management Plan (WQMP).

**Offsite Water Quality Standards Mitigation Proposed:**

- The City of Huntington Beach proposes to make a contribution to the Huntington Beach Wetlands and Wildlife Conservancy for restoration of 0.16 acres of the 0.97 acre Upper Magnolia Marsh. However, for practical purposes, the City will fund restoration of the entire 0.97 acres of Marsh with the mitigation contribution. The City has reserved the right to use the excess mitigation balance (0.81 acres) for future projects that impact wetlands.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. The discharger shall maintain a copy of this Certification at the project site during construction.
2. The discharger shall provide evidence of the proposed contribution for the restoration of 0.97 acres of the Upper Magnolia Marsh to the Executive Officer by March 28, 2008. The contribution will constitute 0.97 acres of wetlands mitigation credit only upon the successful completion of the mitigation project, with 0.16 acres dedicated to compensating impacts to wetlands as the result of the Newland Street Widening project<sup>2</sup>.
3. The discharger shall maintain appropriate records of all future dedications of the balance towards mitigating the impacts of other projects to wetlands. All dedications, including those required by other agencies or sold to other parties, shall be disclosed to the Executive Officer as part of any future mitigation proposals involving the use of the mitigation credit for authorization to discharge dredge or fill to waters of the State.

<sup>1</sup> In a letter dated September 10, 2007 to the City of Huntington Beach, Orange County Sanitation District approved the diversion subject to various conditions.

<sup>2</sup> The establishment of the mitigation credit balance does not constitute an obligation by the Executive Officer to accept its use to compensate for impacts to the beneficial uses of the receiving waters as the result of a future project.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wgorders/2003/wqo/wqo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wgorders/2003/wqo/wqo2003-0017.pdf).

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert  
State Water Resources Control Board, OCC – Erik Spiess  
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme  
California Department of Fish and Game – Naeem Siddiqui  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and Dave Smith

